

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DONALD T. HILL,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:13CV1827 CDP
)	
INTOWN SUITES MANAGEMENT)	
INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Donald Hill brought suit for personal injuries against defendant Intown Suites Management, Inc. A Suggestion of Death has now been filed indicating that Mr. Hill, has died in an unrelated automobile accident. A Motion for Substitution of Parties has also been filed on plaintiff's behalf, seeking the substitution of plaintiff's wife, Josephine Hill, as a plaintiff *ad litem*.

Under Missouri law, a cause of action for personal injuries not resulting in death does not abate by reason of the party's death, but instead survives to the *personal representative* of the injured party. R.S. Mo. § 537.020.1(1); *State ex rel. Cunningham v. Wiggins*, 156 S.W.3d 473, 476 (Mo. Ct. App. 2005). "Personal representative," as used in the statute, is that person to whom letters testamentary or letters of administration have been issued in a probate estate. *Cunningham*, 156 S.W.3d at 476 (citations omitted).

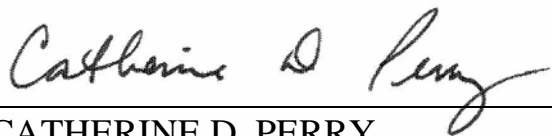
In contrast, Section 537.021.1(1) of the Missouri Revised Statutes authorizes an *ad litem* appointment to maintain a decedent's action instead of the personal representative, "but only for the purpose of pursuing a cause of action for lost chance of recovery or survival." *Cunningham*, 156 S.W.3d at 476.

Plaintiff's complaint includes no count for lost chance of recovery or survival. As such, substitution as a plaintiff *ad litem* is inappropriate, and if the case is to continue, plaintiff must have a personal representative appointed by the state court. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for substitution of parties [# 33] is denied.

IT IS FURTHER ORDERED that the deadlines in the Case Management Order and the Order Referring Case to Alternative Dispute Resolution are vacated, pending further order of the court.

IT IS FURTHER ORDERED that plaintiff's counsel must file a proper motion to substitute, or a status report indicating when such a motion will be filed, no later than **July 15, 2014**. Once a proper party is substituted, the court will issue a new scheduling order.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 6th day of June, 2014.